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February 16, 2021

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

John Freedman
President and Registered Agent
Joseph Freedman Co., Inc.
115 Stevens Street
Springfield, MA 01104
Certified Mail No.: 70192970000191532831

Re: 60-Day Notice of Violations and Intent to File Suit Regarding Noncompliance with
Federal Clean Water Act: 115 Stevens Street, Springfield, MA

Dear Mr. Freedman,

We write to give notice that the Massachusetts Attorney General's Office intends to file a civil action on behalf of the Commonwealth of Massachusetts in the United States District Court for the District of Massachusetts under section 505 of the Federal Clean Water Act, 33 U.S.C. § 1251, *et seq.* (the "Clean Water Act" or "the Act") against Joseph Freedman Co., Inc. ("Freedman") for violations occurring at its scrap metal facility at 115 Stevens Street, Springfield, Massachusetts (the "Facility"). The subject of the action will be Freedman's failure to properly monitor and control its discharges of industrial stormwater into the City of Springfield's municipal separate storm drain system ("Springfield MS4"), which discharges to Poor Brook, a tributary of the Chicopee River. These discharges contain excessive levels of lead and other pollutants and are not in compliance with a permit issued to Freedman by the United States Environmental Protection Agency ("EPA") for industrial stormwater discharges ("Stormwater Permit"). Freedman's discharges therefore violate the Act.

The Attorney General's Office will ask the Court to order Freedman's future compliance with the Act, assess civil penalties in an appropriate amount,¹ award the Commonwealth its litigation costs, including attorney and expert fees, and award any other relief the Court deems appropriate. The Commonwealth's complaint will be filed a minimum of 60 days after the

¹ The Statute authorizes the Court to assess a penalty of up to \$55,800 per day for each of the Freedman's prior violations. See 33 U.S.C. §§ 1365(a); 1319(d); 40 C.F.R. § 19.4; 85 Fed. Reg. 83818 (Dec. 23, 2020).



postmark date of this letter. This is a formal 60-day notice of intent to sue that is being served pursuant to 40 C.F.R., Part 135.

This notice is being provided by the Commonwealth of Massachusetts, acting by and through the Office of Attorney General Maura Healey. Counsel for the Commonwealth of Massachusetts in this case is:

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BACKGROUND

The Facility

Freedman receives, stores, and processes scrap metal materials outdoors on several acres of impervious surface in Springfield, adjacent to catch basins that drain into Poor Brook via the Springfield MS4.

Freedman moves unprocessed metals, final products, and waste materials ("Industrial Materials") around and off the Facility with heavy equipment and vehicles. Freedman stores Industrial Materials uncovered outdoors. Freedman and persons that visit the Freedman Facility in the ordinary course of business scatter Industrial Materials around the Facility, including on its ground surface. Much of the surface of the Facility is strewn with Industrial Materials, and there are large uncovered piles of Industrial Materials throughout the Facility. Industrial Materials that fall on the ground mix with other sediments.

Precipitation comes into contact with Freedman's Industrial Materials and with the sediment on the ground surface. Precipitation that lands on the Facility picks up pollutants including heavy metals and runs off the Facility into the nearby municipal catch basins. Pollutants at the Facility become mobilized by wind, equipment, and vehicles at the Facility and are tracked around and off the Facility by vehicles. Pollutants from the Facility are picked up in stormwater and discharged into the catch basins that flow through the Springfield MS4 into Poor Brook.

Potential Pollutant Sources and Pollutants

Freedman's stormwater discharges contain a myriad of pollutants, some of which it is required to monitor pursuant to the Stormwater Permit. Among the pollutants present in excessive amounts in Freedman's stormwater discharges are lead, zinc, aluminum, iron, copper, chemical oxygen demand ("COD"), and total suspended solids ("TSS").

Excessive heavy metals in runoff pose a long-term threat to aquatic ecosystems, the food chain, and human health. Once introduced into the aquatic environment, lead and other heavy metals such as zinc, aluminum, iron, and copper will mix in the water column, settle into sediments, or be consumed by biota. Heavy metals are readily dissolved in water, making them easily absorbed by aquatic organisms such as fish and invertebrates. Lead is particularly toxic to organisms even at very low concentrations. Excessive levels of heavy metals in the aquatic environment can disturb organisms' growth, metabolism, and reproduction. The presence of heavy metals in bottom-sediment is a long-term source of aquatic contamination because the metals will be slowly released into the environment over time and will become re-mobilized in times of flooding or other disruptive events. Heavy metals tend to bioaccumulate, posing a threat to species higher up on the food chain, such as humans.

COD is a measurement of organic matter in water. Excessive discharges of organic matter pose a risk of harm to water quality and aquatic life. When high levels of organic matter are discharged to a waterbody, the presence of bacteria, fungi, and other decomposer organisms increases. The presence of decomposer organisms and the decomposition process lowers the available oxygen in the water, impairing other aquatic organisms or, in severe cases, asphyxiating them.

TSS is an indicator parameter that measures the presence of solids, or sediment, suspended in a water sample. Solids in scrap yard stormwater discharges are likely to include non-dissolved metal particles and contaminated soil. Even uncontaminated sediment destroys habitat, harms aquatic organisms, and can contribute to flooding. Sediment settles to the bottom of a river where it disrupts and smothers bottom feeding organisms. Sediment becomes suspended in water, where it harms and kills fish by clogging their gills, making it harder for them to breathe. Excessive sedimentation harms the entire food chain by destroying habitat and killing the smaller organisms on which larger ones depend. For example, sediment in the water column increases turbidity, reducing light penetration, decreasing the ability of plant communities to photosynthesize, preventing animals from seeing food, and reducing fish populations. In addition, other pollutants, including toxic pollutants such as heavy metals, pesticides, and petroleum by-products, bind to sediment and can significantly impact water quality when carried by stormwater to rivers and other waterbodies.

Poor Brook and East Springfield

Poor Brook is located to the north of the Facility and flows to the northeast where it joins the Chicopee River, a tributary of the Connecticut River. Before its confluence with the Chicopee River, Poor Brook flows through the Delta Hills Conservation Area. This 27-acre

natural area is the largest open public space in the neighborhood of East Springfield, a neighborhood that has been designated by Commonwealth and EPA as an environmental justice community.

FREEDMAN'S VIOLATIONS AND DATES OF VIOLATIONS

A. THE REQUIREMENTS OF THE ACT

1. Pollutant Discharges Without a Permit Are Illegal.

The Clean Water Act makes the discharge of pollution into waters of the United States unlawful unless the discharge is in compliance with certain statutory requirements, including the requirement that the discharge be permitted by EPA under the National Discharge Elimination System ("NPDES"). See sections 301(a), 402(a), and 402(p) of the Act, 33 U.S.C. §§ 1311(a), 1342(a), 1342(p). This prohibition applies to discharges of industrial stormwater.

2. Scrap Metal Facilities Must Comply with EPA's General Industrial Stormwater Permit.

Industrial stormwater is runoff from precipitation (rain or snow) that lands on industrial sites such as scrap yards. This runoff is often polluted by materials that are handled or stored on the sites. Stormwater is the leading cause of water quality impairment in Massachusetts. During every rain or snowmelt event, runoff flows over the land surface, picking up potential pollutants such as sediment, organic matter, nutrients, metals, and petroleum by-products. Polluted stormwater runoff can be harmful to plants, animals, and people.

To minimize polluted stormwater discharges from industrial facilities, EPA issued the Stormwater Permit under the NPDES program. Facilities that acquire, stockpile, and process scrap metals and that discharge directly or through municipal separate storm sewer systems are subject to the requirements of this Stormwater Permit.²

The Permit requires facilities such as Freedman to, among other things:

- a. select, design, install, and implement pollutant control measures that minimize pollutants in stormwater discharges, Stormwater Permit, Section 2.1 (pg. 14);
- b. locate materials, equipment, and activities to contain potential spills, Stormwater Permit, Section 2.1.2.4 (pg. 15);
- c. minimize contact of stormwater runoff with Industrial Materials, scrap processing equipment, and scrap processing areas, Stormwater Permit, Section 8.N.3.1.2 (pgs. 125-126);
- d. keep clean all exposed areas that are potential sources of pollutants by storing materials in appropriate containers, properly controlling runoff associated with dumpsters, and keeping exposed areas free of waste, garbage, and floatable debris, Stormwater Permit, Section 2.1.2.2 (pgs. 15-16);

² Permit, Appendix D, pgs. D-4.

- e. minimize generation of dust and off-site tracking of Industrial Materials in order to minimize pollutant discharges, Stormwater Permit, Section 2.1.2.10 (pg. 19);
- f. conduct and document corrective action within mandatory timelines to expeditiously eliminate excessive stormwater pollution whenever the average of four quarterly sampling results exceeds an applicable benchmark, Stormwater Permit, Sections 2.1 and 4.2 (pgs. 14, 27-29);
- g. conduct routine facility inspections at least quarterly and quarterly visual assessments to, among other things, sample and assess the quality of the facility's stormwater discharges, ensure that stormwater control measures required by the permit are functioning correctly and are adequate to minimize pollutant discharge, and to ensure timely corrective actions are taken when they are not, Stormwater Permit, Sections 3.1. and 3.2 (pgs. 22-26);
- h. collect and analyze stormwater samples for compliance with EPA benchmarks that apply to scrap metal facilities, including for lead, zinc, aluminum, iron, copper, COD, and TSS, Stormwater Permit, Sections 6 and 8.N.6 (pgs. 30-44, 129-130);
- i. report all benchmark monitoring data to EPA within mandatory deadlines, Stormwater Permit, Section 7.4 (pgs. 48-49); and
- j. timely prepared and submitted to EPA annual reports that include findings from the facility inspections, visual assessments, and the documentation of corrective actions, Section 7.5 (pgs. 49-50).

B. FREEDMAN'S VIOLATIONS AND DATES OF VIOLATION

Freedman has been violating the terms of the Stormwater Permit as follows:

The following violations of the Act occurred on each day since at least May 16, 2016:

- a. Failure to select, design, install, and implement pollutant control measures that minimize pollutants in stormwater discharges (violations of section 2.1).
Freedman's stormwater contains excessive amounts of lead, zinc, aluminum, iron, copper, COD, and TSS. *See, e.g.,* Exhibit B. Sampling results show concentrations of contaminants many times higher than benchmark standards established by the EPA. For example, as recently as the second quarter of 2020 (April through June), Freedman's stormwater discharges exceeded the benchmarks for lead by 7,000% (more than seventy times the limit), aluminum by 2,533% (more than twenty-five times the limit), COD by 600% (six times the limit), iron by 5,000% (fifty times the limit), TSS by 1000% (ten times the limit), copper by 26,053% (over two hundred and fifty times the limit), and zinc by 11,000% (over 100 times the limit).
- b. Failure to locate materials, equipment, and activities to contain potential spills (violations of section 2.1.2.1).
- c. Failure to minimize contact of stormwater runoff with Industrial Materials, scrap processing equipment, and scrap processing areas (violations of section 8.N.3.1.2).

- d. Failure to keep clean all exposed areas that are potential sources of pollutants by storing materials in appropriate containers, properly controlling runoff associated with dumpsters, and keeping exposed areas free of waste, garbage and floatable debris, Stormwater Permit (violations of section 2.1.2.2).
- e. Failure to minimize generation of dust and off-site tracking of Industrial Materials in order to minimize pollutant discharges, Stormwater Permit (violations of section 2.1.2.10).
- f. Failure to conduct and document corrective action within mandatory timelines to expeditiously eliminate excessive stormwater pollution whenever the average of four quarterly sampling results exceeds an applicable benchmark (violations of sections 2.1 and 4.2). Freedman has been discharging stormwater that exceeds by significant amounts EPA's benchmark values for lead, zinc, aluminum, iron, copper, COD, and TSS. *See, e.g.,* Exhibit B. Accordingly, corrective action requirements were triggered when the quarterly average monitoring values for many of the pollutants in Freedman's stormwater discharges were consistently exceeding EPA benchmarks.
- g. Failure to conduct routine facility inspections at least quarterly and quarterly visual assessments to, among other things, sample and assess the quality of the facility's stormwater discharges, ensure that stormwater control measures required by the permit are functioning correctly and are adequate to minimize pollutant discharge, and timely perform corrective actions when they are not (violations of sections 3.1. and 3.2).

The following violations of the Act occurred on each day since at least April 30, 2017:

- a. Failure to collect and analyze stormwater samples from all of its stormwater outfalls for compliance with EPA benchmarks that apply to scrap metal facilities, including for lead, zinc, aluminum, iron, copper, COD, and TSS (violations of sections 6 and 8.N.6). Freedman has never sampled from Outfall 002 and has failed to sample from any outfall during the following quarters: all four quarters of 2017 and the third quarter of 2020.
- b. Failure to report all benchmark monitoring data to EPA within mandatory deadlines (violations of section 7.4).

The Following violation of the Act occurred on each day since at least January 30, 2020:

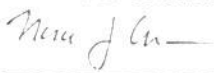
- a. Failure to timely prepare and submit to EPA annual reports that include findings from the facility inspections and visual assessments and the documentation of corrective actions (violations of section 7.5). Freedman failed to submit annual reports for the years 2019 and 2020.

CONCLUSION

The Attorney General's Office believes this Notice of Violations and Intent to File Suit sufficiently states the basis for a civil action. During the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of litigation. If you wish to pursue such discussions, please have your attorney contact us within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

COMMONWEALTH OF MASSACHUSETTS

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EXHIBIT B
Table of Benchmark Exceedances

Outfall 001

Quarter End Date	Parameter	EPA Benchmark Value	Amount in Sample	Percentage Above Benchmark
3/31/2016	Lead	0.014 mg/l	0.54 mg/l	3857.14 %
	Aluminum	.75 mg/l	10 mg/l	1333.33 %
	COD	120 mg/l	150 mg/l	125 %
	Iron	1 mg/l	20 mg/l	2000 %
	TSS	100 mg/l	330 mg/l	330 %
	Copper	.0038 µg/l	0.54 µg/l	14210.53 %
	Zinc	.04 mg/l	1.5 mg/l	3750 %
9/30/2016	Lead	0.014 mg/l	0.019 mg/l	135.71 %
	Aluminum	.75 mg/l	0.9 mg/l	120 %
	COD	120 mg/l	140 mg/l	116.67 %
	Iron	1 mg/l	1.2 mg/l	120 %
	Copper	.0038 µg/l	0.76 µg/l	20000 %
	Zinc	.04 mg/l	1.5 mg/l	375 %
6/30/2018	Lead	0.014 mg/l	0.089 mg/l	635.71 %
	Aluminum	.75 mg/l	1.7 mg/l	226.67 %
	Iron	1 mg/l	3.7 mg/l	370 %
	Copper	.0038 µg/l	130 µg/l	3421052.63 %
	Zinc	.04 mg/l	0.35 mg/l	875 %
3/31/2019	Lead	0.014 mg/l	0.87 mg/l	6214.29 %
	Aluminum	.75 mg/l	24 mg/l	3200 %
	COD	120 mg/l	510 mg/l	425 %
	Iron	1 mg/l	43 mg/l	4300 %
	TSS	100 mg/l	580 mg/l	580 %
	Copper	.0038 µg/l	900 µg/l	23684210.53 %
	Zinc	.04 mg/l	2.8mg/l	7000 %
6/30/2019	Lead	0.014 mg/l	0.064 mg/l	457.14 %

	Aluminum	.75 mg/l	1.2mg/l	160 %
	COD	120 mg/l	160 mg/l	133.33 %
	Iron	1 mg/l	1.9 mg/l	190 %
	Copper	.0038 µg/l	120 µg/l	3157894.74 %
	Zinc	.04 mg/l	.3 mg/l	750 %
9/30/2019	Lead	0.014 mg/l	0.43 mg/l	3071.43 %
	Aluminum	.75 mg/l	11 mg/l	1466.67 %
	COD	120 mg/l	340 mg/l	283.33 %
	Iron	1 mg/l	26 mg/l	2600 %
	TSS	100 mg/l	270 mg/l	270 %
	Copper	.0038 µg/l	580 µg/l	15263157.89 %
	Zinc	.04 mg/l	2.2 mg/l	5500 %
12/31/2019	Lead	0.014 mg/l	0.87 mg/l	6214.29 %
	Aluminum	.75 mg/l	22 mg/l	2933.33 %
	COD	120 mg/l	680 mg/l	566.67 %
	Iron	1 mg/l	41 mg/l	4100 %
	TSS	100 mg/l	560 mg/l	560 %
	Copper	.0038 µg/l	.81 µg/l	21315.79 %
	Zinc	.04 mg/l	3.5 mg/l	8750 %
6/30/2020	Lead	0.014 mg/l	0.98 mg/l	7000 %
	Aluminum	.75 mg/l	19 mg/l	2533.33 %
	COD	120 mg/l	720 mg/l	600 %
	Iron	1 mg/l	50 mg/l	5000 %
	TSS	100 mg/l	1000 mg/l	1000 %
	Copper	.0038 µg/l	.99 µg/l	26052.63 %
	Zinc	.04 mg/l	4.4 mg/l	11000 %

EXHIBIT A

DAYS BETWEEN MAY 16, 2016 AND FEBRUARY 3, 2021 ON WHICH STORMWATER FROM FACILITY DISCHARGED INTO WATERS OF THE UNITED STATES

Year	Month	Date
2016	May	5
2016	June	6,12,28
2016	July	15
2016	August	2,11,13,14,22
2016	September	19,24,27
2016	October	1,10,28
2016	November	16,20,30
2016	December	1,12,18,25,30
2017	January	4,18,24,25
2017	February	8,10,12,13,26
2017	March	28,29
2017	April	1,4,5,7,21,26
2017	May	6,14,26
2017	June	1,6,7,20
2017	July	8,13,19,25
2017	August	3,5,6,23
2017	September	3,4,7
2017	October	10,25,26,30
2017	November	
2017	December	6,10,13,24,25
2018	January	5,13,24
2018	February	2,5,8,11,12,24,26
2018	March	2,3,8,14
2018	April	4,7,16,17,26
2018	May	16,20
2018	June	4,5,19,25,28,29
2018	July	4,7,18,23,24,26,27,28
2018	August	3,4,5,8,15,18,19
2018	September	11,13,18,19,26,27,28
2018	October	2,3,12,28
2018	November	3,6,7,10,13,14,16,20,27
2018	December	2,17,21,22,29

2019	January	1,6,9,20,25,30
2019	February	7,13,18,21,24
2019	March	4,10,22
2019	April	1,8,13,15,16,20,21,23,27
2019	May	13,14,24,29
2019	June	11,17
2019	July	7,12,23
2019	August	1,8,18,22
2019	September	3,13
2019	October	8,17,20,23,28
2019	November	1,19,24,25
2019	December	2,3,10,11,14,18,30,31
2020	January	19,26
2020	February	6,13,27
2020	March	14,19,24,29,30
2020	April	10,14,18,22,27
2020	May	1,16
2020	June	28,29,30
2020	July	4
2020	August	3,28,30
2020	September	3,30
2020	October	13,14,17,30,31
2020	November	2,16,23,24,26
2020	December	1,5,6,17,25,26
2021	January	2,16,17,27
2021	February	2